

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 7th day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. REENA RAGGI,
HON. RICHARD C. WESLEY,
Circuit Judges.

Qi Chu,

Petitioner,

v.

No. 05-4958-ag
NAC

Attorney General of the United States,
Respondent.

FOR PETITIONER: Ephraim Tahir Mella, Philadelphia, Pennsylvania.

FOR RESPONDENT: Because the Court did not receive a brief from the respondent within fifteen days of the May 5, 2006 due date specified in the scheduling order issued on April 5, 2006, this case has been decided without the benefit of respondent's brief. *See* Local Rule § 0.29(d).

1 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
2 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
3 petition for review is DENIED.

4 Qi Chu, through counsel, petitions for review of the August 2005 BIA decision denying
5 his motion to reopen deportation proceedings. We assume the parties’ familiarity with the
6 underlying facts and procedural history of the case.

7 Our review in this case is severely constrained by the fact that, in his brief to this court,
8 Chu challenges only the BIA’s 1998 affirmance of the IJ’s denial of asylum and withholding, for
9 which ruling Chu never filed a petition for review. The BIA’s affirmance and its denial of a
10 motion to reopen are separate decisions raising distinct legal issues. In this case, even the factual
11 bases of Chu’s initial asylum claim and his motion to reopen were different. *See Khouzam v.*
12 *Ashcroft*, 361 F.3d 161, 164 (2d Cir. 2004). Because Chu does not here challenge, either directly
13 or indirectly, the BIA’s denial of his request to reopen based on his three United States-born
14 children, he has waived any challenge to the merits of that decision. *See Yueqing Zhang v.*
15 *Gonzales*, 426 F.3d 540, 542 n.1 (2d Cir. 2005); *Norton v. Sam’s Club*, 145 F.3d 114, 117 (2d
16 Cir. 1998).

17 ____For the foregoing reasons, the petition for review is DENIED. Having completed our
18 review, any stay of removal that the Court previously granted in this petition is VACATED, and
19 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
20 request for oral argument in this petition is DENIED in accordance with Federal Rule of
21 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).
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FOR THE COURT:
Roseann B. MacKechnie, Clerk

By:_____